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Date: October 1, 2003

To: Joyce Burgett, RN, Supervisor
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Communicable Disease Control and Prevention Bureau
Montana Department of Public Health and Human Services

From: Rick Chiotti, Administrator
Health Enhancement and Safety Division

Cathy Warhank, Chief Legal Counsel
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Re: Procedural Guidance for Minimizing Immunization-related Enrollment Delays of Students

Background

The parent/guardian of a child requested that the child be allowed to attend a public school in a Montana community. The parent/guardian provided no record of immunizations for the child. The school enrolled the child citing federal law as the basis for enrolling the student. The local health department, citing public health disease control concerns and state immunization law, expressed concern that the child was being allowed to attend school. The local health department sought advice from the state health department, which in turn asked the state education agency (the Office of Public Instruction) for guidance.

Discussion

Federal and state laws contain specific provisions regarding the immunization of persons seeking to attend school as a pupil.

Federal Law

Title X Part C of the federal No Child Left Behind Act of 2001 (Title X is also known as the McKinney-Vento Homeless Education Assistance Act of 2001) says in Subtitle B Section 721(2) that a state that has any laws that act as a barrier to a homeless youth's attendance in school will revise such laws to ensure that homeless youth are afforded the same education as other youth. Further, in Section 722(g) STATE PLAN subsection (1)(H)(i), federal law says that a state plan for education of homeless children shall include strategies to address enrollment delays that are caused by "immunization and medical records requirements."

Montana Law

Montana law regarding immunization does not delay or preclude the enrollment of homeless youth in public schools. Montana Code Annotated (MCA 20-5-403 (a), (b) and (c)) does require

immunization of any person who wishes to attend school as a pupil. In the alternative to immunization, 20-5-403 (d) allows for an exemption as described in 20-5-405 for medical or religious reasons. 20-5-406 states that the governing body (e.g., the board of trustees) of a school shall require written evidence of immunization. 20-5-408 says that the school board "shall prohibit FROM FURTHER ATTENDANCE [emphasis added] any pupil allowed to attend conditionally and who has failed to obtain the immunizations required by" law "within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted" for medical or religious reasons. The law defines 'department' as the Department of Public Health and Human Services (DPHHS). 20-5-409 requires that the parent/guardian of the youth must do one of three actions: show evidence of immunization, get the child immunized or file for an exemption. If the parent/guardian fails to do any of those actions and such failure leads to the child being excluded from school, then the state or local health department may seek an injunction requiring the parent to perform one of the three actions. Thus, Montana law has an inherent set of strategies to limit immunization-related delays in school attendance for homeless youth. Specifically, the student can attend on a conditional basis but if immunization records, immunizations or exemptions are not provided within time periods established by the health department, then the state or local health department can seek to force the parent/guardian to: (1) provide such records, (2) have the child immunized or (3) seek a medical or religious exemption.

Summary

State law clearly addresses immunization requirements for pupils (MCA 20-5-402 through 409), and state law (MCA 50-1-206) establishes the DPHHS as the agency that is to adopt regulations prescribing the requirements for "matters pertinent to the health and physical well-being of pupils, teachers and others who frequent schools."

The federal law (Title X of NCLB aka the McKinney-Vento Act) requires states to have strategies to address attendance delays for homeless youth. Section 722 (g)(3)(C)(i) -- refer to page 583 of the NCLB Conference Report -- says the school shall immediately enroll the homeless child even if no medical record is provided. Section 722(g)(3)(C)(iii) says that the school shall immediately refer the parent/guardian of the homeless child to the local education agency's "liaison" (this could be the school nurse or local county public health nurse -- refer to the bottom of page 581 of the conference report, section (J)(ii) for wording) who will assist in obtaining the necessary immunizations or records.

Conclusion

If school governing authorities (e.g., local school boards), parents/guardians, and state and local health departments act within the parameters set in Montana and federal law, immunization-related attendance delays for homeless youth will be minimized.

Procedural Guidelines

These procedural guidelines constitute the strategy for enrolling in school any child, including a homeless child, who does not have a record of required immunizations.

To minimize, to the greatest extent practicable, delays in enrollment in a public or non-public school ¹ of a homeless child who seeks to attend school *and* to protect the health and well-being of the homeless child as well as that of all students and employees of Montana's public and non-public schools, the Office of Public Instruction provides the following guidance, consistent with federal ² and state ³ laws concerning immunizations, for enrolling any student:

- A public or non-public school shall enroll any child, including a homeless child, who requests to attend the school. [Reference: Title X Section 722(g)(3)(C)(i)]
 - If the student ⁴ provides documentation of required immunizations, the student can be enrolled and no further action regarding immunizations need be taken. [Reference: MCA 20-5-406]
 - If the student ⁴ cannot provide documentation of required immunizations, the student will be allowed conditional attendance and will be referred to the local health department for immediate follow up regarding required immunizations. [Reference: MCA 20-5-404 and 408, and Title X Section 722(g)(3)(E)(i - iv)]
 - The state health department or local health department shall follow state law in ensuring that the child obtains the required immunizations. [Reference: MCA 20-5-409]
 - If, under the direction of the state or local health department and within a time period established by the state or local health department, the student ⁴ exercises one of the options available under state immunization law, the student shall be moved from conditional attendance to regular enrollment. [Reference: MCA 20-5-408 and 409]
 - If, under the direction of the state or local health department and within a time period established by the state or local health department, the student ⁴ fails to exercise one of the options available under state immunization law, the student shall be prohibited from attending school. [Reference: MCA 20-5-408 and 409]

Notes:

- 1 The term "non-public school" does not include home schools.
- 2 For these guidelines, federal law is the 2001 reauthorization of the Elementary and Secondary Education Act known as the No Child Left Behind Act of 2001, specifically Title X of the act. Title X is also known as the McKinney-Vento Act of 2001.
- 3 For these guidelines, state law is MCA 20-5-402 through 20-5-409. These sections of Montana law address immunization requirements for all students attending public or non-public schools.
- 4 "Student" in this context refers to the parent or guardian of the student.